MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2021 / 2022 SESSION

UCP4612 – CRIMINAL PROCEDURE I

(All Sections / Groups)

27 NOVEMBER 2021
Reading Time: 9.15 a.m. – 9.30 a.m.
(15 Minutes)

Answering Time: 9.30 a.m. – 12.30 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes only in their question paper. Students then have the remaining **three hours** in which to answer the questions.

2. This question paper consists of 5 pages with 5 questions only.

3. Attempt **ALL** questions in **PART A** and any **ONE** question in **PART B**. The distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of the following statutes into the exam venue:
   i. Criminal Procedure Code; and
   ii. Penal Code
   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Write all your answers in the Answer Booklet provided.

PART A: Attempt **ALL** questions.

QUESTION 1

Answer all parts of this question.

(a) Dr. Sakura had operated a medical clinic at Lot 123 under the name of 'Clinic Sakura' since 2015. By a letter dated 29 November 2020, the Ministry of Health gave Dr. Sakura two weeks to furnish them with information and supporting documents failure of which the clinic's registration would be revoked. After the expiry of the deadline stipulated in the letter, a team of Inspector from the Ministry of Health entered Dr. Sakura's premise and confiscated certain goods and business equipment. The search and seizure was made pursuant to s 90(d) of the Private Healthcare Facilities and Services Act 1998. The officers however failed to prepare a search list of the items seized under s 95 of the Act.

Dr. Sakura filed an application to declare that the search of its premise was unlawful and the officers had committed a criminal trespass. She also contended that the evidence had been illegally obtained and therefore inadmissible as evidence.

As the Federal counsel handling this case, determine the appropriate rebuttal against the allegation.

Private Healthcare Facilities and Services Act 1998

S 89. Power to search and seize. (with warrant)

S 90: Search and seizure without warrant.
If an Inspector has reasonable cause to believe that by reason of delay in obtaining a search warrant under s 89,

(d) the evidence sought may be tampered with or destroyed,

he may exercise in, and in respect of, the private healthcare facility or premises all the powers referred to in s 89 in as full and ample a manner as if he were authorized to do so by warrant issued under that section.

S 95: List of things seized.
(1) Where any seizure is made under s 88, 89 or 90 on any private healthcare facility or premises the seizing Inspector shall prepare a list of the things seized from the premises.

(21 marks)

Continued…

(b) Being suspicious, Inspector Boruto took Shino to Hospital Serdang. At the hospital, Shino had undergone an X-ray examination which was conducted by a Radiographer. The X-ray showed that there were foreign objects in the Shino's abdomen. Shino was subsequently detained. During the next 3 days the accused excreted 60 capsules which were washed and carefully marked by the sentry on duty accompanied by the preparation of search lists noting the excretion.

Identify the mode of body search in this situation.

(4 marks)

(Total: 25 Marks)

QUESTION 2

Answer all parts of this question.

(a) Analyse the procedure to commencement of proceedings before a Magistrate's court when a Magistrate is of the opinion that the Magistrate taking cognizance of an offence and there is sufficient grounds for proceeding.

(9 marks)

(b) Identify the roles and duty of the Public Prosecutor.

(8 marks)

Continued…

(c) Distinguish cases where the Public Prosecutor must "require" them to be transferred to the High Court the Dangerous Drugs Act 1952.

Dangerous Drugs Act 1952

Section 41A. Special provisions relating to transmission of a case to, and trial by, the High Court.

(1) Where any case in respect of an offence under this Act is triable exclusively by the High Court or is required by the Public Prosecutor to be tried by the High Court, the accused person shall be produced before the appropriate subordinate court which shall, after the charge has been explained to him, transmit the case to the High Court without holding a preliminary inquiry under Chapter XVII of the Criminal Procedure Code, and cause the accused person to appear or be brought before such Court as soon as may be practicable.

(2) When the accused person appears or is brought before the High Court in accordance with subsection (1), the High Court shall fix a date for his trial which shall be held in accordance with the procedure under Chapter XX of the Criminal Procedure Code.

(3) The trial of a case transmitted to the High Court under subsection (1) shall be by a Judge of the High Court sitting alone, and *Chapters XXI and XXII of the Criminal Procedure Code shall not apply to such trial. (4) Subsections (1), (2) and (3) shall have effect notwithstanding any other written law to the contrary

(8 marks)

(Total: 25 Marks)

Continued…

QUESTION 3

Luffy suffered an injury and went for a treatment at Hospital Konoha. Upon receiving treatment, Luffy went to the police hut (*pondok polis*) in the hospital at about 7.30 p.m. He spoke to Corporal Ace, complaining that a man named Kaido stabbed him.

Corporal Ace was about to record the complaint when he received a telephone call from Inspector Sanji at 7.35 p.m. Inspector Sanji instructed him to detain a man named Luffy as he was a suspect in a murder case. The suspect was injured and was at the hospital for a treatment.

Upon hearing this, Corporal Arrest immediately arrested Luffy. Luffy was brought to the Police Station. At 8.13 p.m., ASP Nami came to record the statement from Luffy. The recording completed at 9.00 p.m.

On the next day, Luffy was brought to the deceased's house. He told Inspector Sanji that he thrown the knife into a bush near the house. Inspector Sanji had recovered the knife inside the bush.

Analyse the above facts and determine the admissibility of the statement made by Luffy to Corporal Ace, ASP Nami and Inspector Sanji.

(25 marks)

(Total: 25 Marks)

Continued…

PART B:

Instruction: Attempt **ONE** question **only**.

QUESTION 4A

The four accused in this case ('A1, A2, A3 and A4') were charged, in furtherance of their common intention, with the murder of a woman (Nina Naomi), her driver, a lawyer and a banker on a farm in Kota Tinggi, Johor, between 8.30pm and 9.45pm on 30 August 2021.

Based on the facts above, with reference to statutory provisions and case law address the issues below:

(a) Determine on whether the trial against the four accused person can be proceeded jointly.

(15 marks)

(b) A1 was charged together with the other three (3) accused person for the murder of the woman (Nina Naomi). Draft a charge against A1.

(10 marks)

(25 Marks)

OR

QUESTION 4B

"…….this discretionary power must be exercised judicially. In order for this court to exercise its discretionary power, this court must be satisfied that there are sufficient materials before the court to consider or justify invoking its powers under s. 158 of the CPC and it must be invoked only at the appropriate time as expressly regulated by s. 158 of the CPC. The procedure expressly regulated by s. 158 of the CPC cannot be varied by consent or be waived."

[In the case of PP v Azwan & Another Case [2007] 10 CLJ 469, VT Singham J opined]

Examine the legal issues applicable to the process of amending a charge.

(Total: 25 Marks)

End of Page